

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

A.O. No. 502/2001
(Old No. 103/1989)

Girish Chandra Sharma

Vs

State & others

Approved for reporting.

~~Not approved for reporting~~

Date of decision 27-07-2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 502 of 2001

(Old No. 103/1989)

Girish Chandra Sharma

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Appellant

Versus

State & others

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Respondents

Dated: 27.7.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

Present appeal has been filed against the judgment and award dated 15.11.1988 passed by the Motor Accident Claims Tribunal, Nainital.

Briefly stated the appellant has filed a claim petition before the Motor Accident Claims Tribunal, Nainital for grant of compensation on account of death of Ashish Kumar Sharma son of the petitioner in a motor vehicle accident on 16.1.1988 at about 6.45 PM near Toll Tax Barrier, Rampur road, Haldwani involving vehicle No. UGP 4165 belonging to the Forest Department of the State. The deceased who was aged 15 years was going to his home on bicycle. The vehicle in question had crushed the boy due to which he died at the spot. The petitioner has alleged that the accident was caused due to rash and

negligent driving by the driver of the vehicle in question. The petitioner has claimed a sum of Rupees five lakhs as compensation.

The opposite parties contested the claim petition and have filed their respective written statements. They admitted the accident but denied that the vehicle was being driven rashly and negligently.

On the pleadings of the parties the following issues were framed by the Claims Tribunal:

1. Whether the accident occurred due to the rash and negligent driving of vehicle No. UGP 4165?
2. Whether the claimant is not the legal representative of the deceased? If so, its effect?
3. What amount of compensation, if any, and against whom the claimant is entitled?

The petitioner has examined himself as P.W.1, Sri Laxmi Dutt as P.W.2 and Sri Ganesh Dutt as P.W.3. The opposite parties have examined Driver Birendra Singh Bora as D.W.1. The petitioner also filed post mortem report of the deceased Ex.1 and Technical examination report of the vehicle Ex.2. The Claims Tribunal on the basis of the evidence on record has held that the accident was caused due to rash and negligent driving of the vehicle. In reply of issue no.2 the Claims Tribunal has held that the father of the deceased was competent to file a petition under section 110A even if the mother of the deceased is alive. The Claims Tribunal awarded a sum of Rs.30,000/- as compensation to the petitioner. Feeling aggrieved the present appeal has been filed by the claimant appellant.

The appellant has prayed for enhancement of the amount of compensation. It has come in the evidence that deceased was

aged 15 years and was a student of class 10th. The father of the deceased has deposed on oath that the deceased was a brilliant student and he would earn a handsome amount after completing his study. Although there is no mention of a particular amount as pecuniary loss but the Claims Tribunal have to award an appropriate amount of compensation keeping in view of the status of the claimants.

The Apex Court in *Sheikhupura Transport Co. Ltd. V. Northern India Transport Insurance Co.* (1971) 1 SCC 785 has held as under:

“6. Under Section 110-B of the Motor Vehicles Act, 1939 the tribunal is required to fix such compensation which appears to it to be just. The power given to the tribunal in the matter of fixing compensation under that provision is wide. Even if we assume (we do not propose to decide that question in this case) that compensation under that provision has to be fixed on the same basis as is required to be done under Fatal Accidents Act, 1855 (Act 13 of 1855) the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture. The general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever sources come to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained.”

In view of the above principle of law laid down by the Apex Court a just and proper compensation should be given to the appellant keeping in view that the deceased was a student of

Class X and was a brilliant student. Apart from the pecuniary loss the appellant suffered a lot of mental pain and agony on account of death of a young boy. Considering all facts and circumstances I am of the opinion that a consolidated amount of Rs.one lakh as compensation would meet the ends of justice.

The appeal is partly allowed. The appellant is awarded a sum of Rupees one lakh as compensation along with pendent lite and future interest at the rate of 9 % per annum against the respondent no.1. The amount already paid shall be given due credit. No order as to costs.

(Rajesh Tandon, J.)

27.7.2004

*Dhyani